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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 180212157-8897-01]**

**RIN 0648-BH72**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in the Gulf For-hire Electronic Reporting Amendment, as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf For-hire Reporting Amendment includes amendments to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). If implemented, this proposed rule would revise reporting requirements for federally permitted charter vessels and headboats (for-hire

vessels). This proposed rule would require an owner or operator of a for-hire vessel with a Federal charter vessel/headboat permit for Gulf Reef Fish or Gulf CMP to submit an electronic fishing report for each fishing trip before offloading fish from the vessel, using NMFS-approved hardware and software. The proposed rule would also require that a for-hire vessel owner or operator use NMFS-approved hardware and software with global positioning system (GPS) capabilities that, at a minimum, archive vessel position data during a trip. Lastly, prior to departing for any trip, this proposed rule would require the owner or operator of a federally permitted charter vessel or headboat to notify NMFS and declare whether they are departing on a for-hire trip, or on another trip type. The purpose of this proposed rule is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Gulf. The information is expected to improve recreational fisheries management of the for-hire component in the Gulf.

**DATES:** Written comments on the proposed rule must be received by *[INSERT DATE 30 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2018-0111," by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/docket?D=NOAA-NMFS-2018-0111>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, *adam.bailey@noaa.gov*, or by email to *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-5806.

Electronic copies of the Gulf For-hire Reporting Amendment may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *http://sero.nmfs.noaa.gov/sustainable\_fisheries/gulf\_fisheries/For-Hire Electronic Reporting/index.html*.

The Gulf For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act (RFA) analysis, and fishery impact statement.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *rich.malinowski@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The CMP fishery in the Gulf is managed jointly under the CMP FMP by the Gulf Council and South Atlantic Council. The Gulf Council manages the reef fish fishery under the Reef Fish FMP. These FMPs are implemented by NMFS through regulations at 50 CFR part 622

under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### **Background**

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act states that the collection of reliable data is essential to the effective conservation, management, and scientific understanding of the nation's fishery resources.

On February 3, 2014, NMFS implemented management measures contained in a framework action to the Reef Fish FMP and the CMP FMP (Headboat Reporting Framework), which modified recordkeeping and reporting provisions for an owner or operator of a headboat with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP, who is selected to participate in the Southeast Region Headboat Survey (SRHS) (79 FR 6097, February 3, 2014). That final rule required a headboat owner or operator to submit a

weekly electronic fishing report, or at shorter intervals if notified by the Science and Research Director (SRD) of NMFS' Southeast Fisheries Science Center (SEFSC). Additionally, the final rule for the Headboat Reporting Framework prohibited headboats from continuing to fish until any delinquent electronic fishing reports are submitted to NMFS. The purpose of the Headboat Reporting Framework was to obtain more timely fishing information from headboats to better monitor recreational annual catch limits (ACLs), improve stock assessments, and improve compliance with reporting in Gulf recreational fisheries.

The SEFSC manages and operates the SRHS. Currently, headboats in the southeast region submit an electronic fishing report to NMFS via the internet by the Sunday following the end of each reporting week, which runs from Monday through Sunday; in other words, reports are due within 7 days after a reporting week ends. This final rule for the Gulf For-hire Reporting Amendment would shorten the time after a trip that federally permitted headboats in the Gulf have to submit electronic fishing reports to NMFS. These reports would be required after each trip before offloading fish from the vessel. If no fish were retained on a trip, submission of an electronic fishing report would be required within 30 minutes after the trip ends.

Similarly, this proposed rule would require that information from a federally permitted charter vessel be reported after each trip through the submission of electronic fishing reports before offloading fish from the vessel, or if no fish were retained, within 30 minutes after the trip ends. Currently, landings and discards from federally permitted charter vessels in the Gulf reef fish and CMP fisheries are monitored through the survey of charter vessels by the Marine Recreational Information Program (MRIP). Fishing effort is calculated based on a monthly sample of federally permitted charter vessels through a phone survey. Catch rate observations and catch sampling are provided through dockside monitoring, also conducted by MRIP. This MRIP charter vessel information is then available in 2-month increments known as waves, so that there are six waves during the calendar year, *e.g.*, January through February, March through April, etc. If NMFS implements the electronic reporting requirements described in the Gulf For-hire Reporting Amendment, the MRIP survey of charter vessels would continue until the proposed electronic reporting program described in the amendment is certified by NMFS, and then the electronic reporting program could replace the MRIP survey of federally permitted charter vessels.

Accurate and reliable fisheries information about catch, effort, and discards is important for stock assessments and the evaluation of management measures. In addition, catch from federally permitted for-hire vessels represents a substantial portion of the total recreational catch for some fish species managed by the Gulf Council, such as red snapper, gray triggerfish, greater amberjack, and mutton snapper. The Gulf Council determined that electronic reporting on a per trip basis could provide more timely information than the current MRIP survey and SRHS, and more accurate and reliable information for those species that have low catches, small ACLs, or are rarely encountered by fishery participants. The Gulf Council expects electronic reporting on a per trip basis by all federally permitted for-hire vessels to enhance data collection efforts, providing for better fisheries management, such as through more data-rich stock assessments and improved data accuracy.

#### **Management Measures Contained in this Proposed Rule**

This proposed rule would require the owners or operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species to submit electronic reports, via NMFS-approved hardware and software, on a per trip basis before offloading fish. If no

fish are landed, the electronic fishing report must be submitted within 30 minutes after the completion of each fishing trip. This proposed rule would also require that a for-hire vessel owner or operator use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. Lastly, this proposed rule would require the owner or operator of a federally permitted charter vessel or headboat to notify NMFS prior to departing for any trip and declare whether they are departing on a for-hire trip, or on another trip type. If the vessel will be operating as a charter vessel or headboat during the specified trip, the vessel owner or operator must also report details of the trip's expected completion.

#### *Electronic Reporting*

This proposed rule would require an owner or operator of a charter vessel or headboat with a Federal charter vessel/headboat permit for Gulf reef fish or CMP species, and is operating as a for-hire vessel, to submit an electronic fishing report for each trip before offloading fish from the vessel, or within 30 minutes after the end of each trip if no fish were landed. The electronic fishing report would include any species that were caught or

harvested in or from any area, e.g., in state or Federal waters in the Gulf or Atlantic, as well as information about the permit holder, vessel, location fished, fishing effort, discards, and socio-economic data.

If the proposed rule is implemented, the owner or operator of a vessel with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species would be required to submit an electronic fishing report using NMFS-approved hardware and software, which could include sending data through a cellular or satellite-based service. NMFS-approved hardware could include devices such as computers, tablets, smartphones, and vessel monitoring system units that allow for internet access and are capable of operating approved software. NMFS is currently evaluating potential software applications for the electronic for-hire reporting program and is considering existing software applications used by partners in the region, including eTRIPS online and eTRIPS mobile, which are reporting products developed by the Atlantic Coastal Cooperative Statistics Program. NMFS maintains a list of NMFS type-approved vessel monitoring system (VMS) units for commercial fisheries at this website <https://www.fisheries.noaa.gov/national/enforcement/noaa-fisheries-type-approved-vms-units>. These systems will be evaluated and potentially modified by the vendors to meet

the proposed Gulf for-hire reporting requirements. Hardware and software that meet the NMFS type approval would be posted on the NMFS Southeast Region website upon publication of any final rule to implement revisions to the Gulf for-hire electronic reporting program. Public reporting burden for the proposed requirements is estimated to average 10 minutes per electronic fishing report.

This proposed rule also extends other provisions to federally permitted charter vessels that currently apply to headboats to allow for modified reporting during catastrophic conditions, such as after a hurricane, and to address delinquent reporting. During NMFS-declared catastrophic conditions, NMFS may accept paper reporting forms, and can modify or waive reporting requirements. Also, a delinquent report would result in a prohibition on the harvest or possession of the applicable species by the for-hire vessel permit holder until all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements.

#### *Location Tracking and Reporting*

This proposed rule would require that vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species have NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive

vessel position data during a trip for subsequent transmission to NMFS, which could include sending data through a cellular or satellite-based service. The location information would be transmitted electronically to NMFS, along with all other required reporting information, prior to offloading fish at the end of each trip, or within 30 minutes after a trip is completed if no fish were landed. To meet these proposed requirements, separate hardware devices may be required to record and submit fishing reports and GPS locations. If it is necessary to submit separate fishing and location reports at the end of each trip, NMFS estimates the reporting burden to submit location information at 2 minutes per trip. The purpose of this proposed requirement is to verify whether a vessel is at the dock.

The GPS portion of the hardware, *i.e.*, the vessel's location tracking device, would have to be permanently affixed to the vessel and must have uninterrupted power, unless the owner or operator applies for and is granted a power-down exemption, *e.g.*, if the vessel is removed from the water for repairs. If a VMS unit approved for the Gulf electronic reporting program is used, the VMS unit would also be required to have uninterrupted power unless a power-down exemption is granted.

In the Gulf, federally permitted commercial reef fish vessels are already required to use a NMFS-approved VMS unit for submitting trip notifications and commercial landings estimates. NMFS has also issued Gulf charter vessel/headboat permits to some of these vessels. However, not all VMS units approved for use on commercial reef fish vessels may be approved for use in the proposed Gulf for-hire reporting program. NMFS-approved VMS units would need software updates by the vendors to meet the proposed for-hire reporting requirements. If a VMS unit required for the Gulf commercial reef fish fishery is not capable of meeting the proposed Gulf for-hire reporting requirements, the owner or operator would need to purchase a VMS unit that is approved for both commercial reef fish and for-hire vessels or purchase a GPS unit that meets the proposed Gulf for-hire reporting requirements. As stated earlier, NMFS would post approved hardware and software on the NMFS Southeast Region website upon publication of any final rule to implement the proposed Gulf electronic reporting program. NMFS expects to choose an effective date for any final rule that would allow time for affected fishery participants to purchase and install approved hardware and software.

This proposed rule would have similar requirements for powering down the GPS or VMS unit as currently exists for

commercial vessels. The current VMS regulations allow for an owner or operator of a commercial vessel to discontinue the use of a VMS unit for a specific period, provided they obtain a VMS power-down exemption letter from NOAA's Southeast Office of Law Enforcement (50 CFR 622.28). To obtain this exemption letter for powering down a GPS unit, the permit holder must fill out the appropriate information on the GPS power down exemption request form, and submit the form by mail or fax to NMFS. NMFS is currently developing an electronic method to submit the GPS power down exemption request form that would need to be completed and approved by NMFS prior to turning off the vessel's GPS unit. NMFS expects this electronic method to be available by the effective date of any final rule. NMFS estimates a GPS or VMS power-down exemption request would require an average of 5 minutes to complete per occurrence.

#### *Trip Notification*

This proposed rule would require an owner or operator of a federally permitted charter vessel or headboat to submit a trip notification to NMFS before departing for any trip. The trip notification would indicate whether the vessel is departing on a for-hire trip or another type of trip, such as a commercial trip. If the vessel will be departing on a for-hire trip, the owner or operator must

also report the expected trip completion date, time, and landing location. The Gulf Council determined that a trip notification would improve effort estimation for charter vessels and headboats, and improve the ability of port agents and law enforcement to meet a vessel at end of a trip for biological sampling and landings validation. This validation would improve the data being collected. The trip notification would be accomplished using a NMFS-approved device, such as the GPS or VMS unit, or by other electronic reporting hardware. Public reporting burden to complete the proposed trip notification requirement is estimated to average 2 minutes per trip.

#### *Other Electronic Reporting Programs*

In April 2018, NMFS published a proposed rule in the **Federal Register** to implement electronic reporting requirements contained in the South Atlantic For-Hire Reporting Amendment applicable to the for-hire component of recreational fisheries in the South Atlantic Council's jurisdiction (83 FR 14400, April 4, 2018). NMFS approved the South Atlantic For-Hire Reporting Amendment on June 11, 2018. Under the South Atlantic reporting program, an owner or operator of a for-hire vessel issued a Federal charter vessel/headboat permit for species managed under the FMPs for CMP (in the Atlantic), Atlantic Dolphin and Wahoo, or

South Atlantic Snapper-Grouper, and is operating as a for-hire vessel, would have to submit an electronic fishing report using NMFS-approved hardware and software on a weekly basis. However, the South Atlantic Council's intent is to prevent multiple reporting by allowing the owner or operator of a vessel with numerous Federal for-hire permits to fulfill the South Atlantic requirements by submitting reports under other programs, if those reporting requirements are more stringent. Therefore, an owner or operator of a for-hire vessel with a Federal charter vessel/headboat permit for an applicable fishery managed by the South Atlantic Council, who would be required to report under the proposed Gulf electronic reporting system, would not also need to report under the South Atlantic's program.

#### **Classification**

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Gulf For-hire Reporting Amendment, the respective FMPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the RFA (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule would apply to all vessels with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species. In 2017, there were 1,376 vessels with at least one valid (non-expired) or renewable Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species, including historical captain permits. These Gulf charter vessel/headboat permits are limited access permits. More than one type of Federal charter vessel/headboat permit has been issued to most for-hire vessels. Among the 1,376 vessels with at least one Gulf charter vessel/headboat permit, in 2017, 1,259 for-hire

vessels had Federal permits for both Gulf reef fish and Gulf CMP species, 52 had only a Gulf reef fish permit, and 65 had only a Gulf CMP permit. Additionally, 172 of these vessels had a Gulf commercial reef fish permit. Finally, 377 of the vessels with at least one Gulf charter vessel/headboat permit had at least one charter vessel/headboat permit for Atlantic CMP species, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper species.

Although the charter vessel/headboat permit application for Gulf reef fish or Gulf CMP species collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat, and vessels may operate in both capacities on different trips. However, if a for-hire vessel meets the selection criteria used by the SRHS and is selected to report by the SRD of the SEFSC, it is considered to operate primarily as a headboat and is required to submit catch and effort information to the SRHS. As of February 2017, there were 73 Gulf headboats that participate in the SRHS. As a result, the estimated 1,376 for-hire vessels that may be affected by this proposed rule are expected to consist of approximately 1,303 charter vessels and 73 headboats. The average charter

vessel operating in the Gulf is estimated to receive approximately \$86,000 (2017 dollars) in annual revenue. The average headboat is estimated to receive approximately \$261,000 (2017 dollars) in annual revenue.

The Small Business Association has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide. All for-hire businesses expected to be directly affected by this proposed rule are believed to be small business entities.

NMFS has not identified any other small entities that might be directly affected by this proposed rule.

This proposed rule would require an owner or operator of a federally permitted charter vessel or headboat to submit an electronic fishing report to NMFS for each trip via NMFS-approved hardware and software, prior to offloading fish from the vessel. NMFS does not expect the submission of an electronic fishing report to require special professional skills. The use of computers, the

internet, smartphones, or other forms of electronic connections and communication is commonplace in the business environment. All headboat operators have been required to submit electronic reports since January 2014 and are expected to be proficient with electronic reporting. As a result, NMFS expects all affected headboat businesses to already have staff with the appropriate skills to meet the proposed change in the timing of report submissions. However, charter vessel operators have not been subject to mandatory electronic reporting of fishing activity and, therefore, may lack experience reporting such, beyond the collection and compilation of similar information for their own business management purposes. As a result, although NMFS does not expect the information required to be reported to be complex or substantially beyond that necessary to meet the record-keeping needs of normal fishing business operational purposes, these operators may need some time to become proficient in the reporting requirements. The hiring of new employees with specialized skills, however, should not be necessary.

While no conflicting Federal rules have been identified, an estimated 377 vessels have Federal permits to harvest species managed by both the Gulf Council and the South Atlantic Council. Among these 377 vessels,

approximately 138 primarily operate as headboats. NMFS has published a proposed rule to require electronic reporting for owners and operators of federally permitted charter vessels in the South Atlantic and modify the reporting deadline for owners and operators of headboats. In order to reduce multiple reporting, the South Atlantic Council would accept, as fulfillment of the requirements of their proposed reporting program, reports submitted under other programs, if the reporting requirements in those other programs are more stringent than those proposed by the South Atlantic Council and meet the core data elements identified by the South Atlantic Council. Because NMFS expects the reporting requirements under this proposed rule to meet these criteria, an owner or operator of a for-hire vessel that has both Gulf and South Atlantic charter vessel/headboat permits and that is required to submit electronic reports under this proposed rule would not be required to also report under the South Atlantic Council's proposed for-hire electronic reporting program. However, owners or operators of for-hire vessels that possess a Gulf reef fish or Gulf CMP permit may also possess one or more Federal for-hire permits to harvest species managed by other regional fishery management councils. It is unknown how many vessels currently fit this description; however,

the number is expected to be small. A vessel with Federal for-hire permits in other regions would also have to comply with any applicable reporting requirements under those permits.

NMFS expects this proposed rule, if implemented, to directly affect an estimated 1,376 for-hire vessels that possess a Federal permit necessary to fish for Gulf reef fish or Gulf CMP species. Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This proposed rule would require that the owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to NMFS for each trip via electronic reporting. These submissions would need to be made prior to offloading fish using NMFS-approved hardware and software. If no fish are retained on a for-hire trip, the report would have to be submitted within 30 minutes of arriving at the dock, following the conclusion of the trip. Because the majority of charter and headboat trips are half-day trips, this

proposed rule could require multiple submissions in a single day. Electronic reporting is estimated to take approximately 10 minutes per trip, which is the time burden that is approximately equivalent to that of the current headboat reporting requirements. However, the proposed rule would provide less flexibility to headboats in terms of how and when to allocate labor resources for reporting. NMFS expects that the time and labor associated with filing these reports would be borne by existing vessel personnel and would not represent the need for additional staff. However, it would necessitate that vessel personnel, as opposed to onshore support staff, complete the reports. There would be an opportunity cost associated with redirecting effort from normal trip operations to the report submission process. Reports could be completed during transit back to port or within normal business activities, once the vessel is tied up to the dock. NMFS expects that each business would adopt the strategy most efficient to its staffing and operational characteristics, thus minimizing any resultant implicit or explicit costs. These costs cannot be estimated with available data.

Because electronic reporting has been a requirement for headboat owners and operators for the past 3 years, the labor and costs associated with reporting have been

internalized within each headboat business. For charter vessel owners, if treated as a new and distinct explicit labor cost, the annual reporting burden is estimated to cost approximately \$340,000 to \$1.73 million (2017 dollars) in total, or \$244 to \$1,259 per vessel on average. These are upper bound cost estimates and would be equivalent to 1.5 percent or less of average annual charter vessel revenue. However, as previously stated, the reporting burden would likely be absorbed by existing vessel personnel, and therefore, labor costs would likely be less. Some of the effort to complete the proposed electronic fishing reports may be redirected from current operational activities, such as normal trip record-keeping that a vessel completes for standard business purposes. The information that would be required under electronic reporting would be accessible to the reporting vessel and, therefore, would satisfy reporting obligations and support business operations. In effect, the electronic reporting system may serve as the record repository for this component of a vessel's business records. In addition to the need to maintain records on the number of trips and passengers a vessel takes, the services for-hire vessels sell require reasonable levels of fishing success. Thus, records of what species a vessel catches, where they are

caught, the time of the year they are caught, and how these change over time are vital to managing a successful business. As a result, the information that is expected to be required under the proposed electronic reporting should be substantially duplicative of information already recorded by these businesses and should augment their ability to monitor and adjust their fishing practices, supporting more successful operations.

Additionally, this proposed rule would require that, prior to departing for any trip, the owner or operator of a vessel issued a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species to notify NMFS, report the vessel identification number, and declare the type of trip (e.g., for-hire or other trip). When departing on a for-hire trip they would also need to report the expected return time, date, and landing location. NMFS expects that the technology cost to for-hire businesses associated with the trip notification system would be minimal. For the sake of comparison, the trip notification system designed by NMFS for commercial Gulf Reef Fish permit holders allows for low cost submission of trip notification reports, either utilizing a toll-free number or existing vessel monitoring system (VMS) equipment. Although the trip notification requirement would be an additional burden on

for-hire vessel operators' time, the opportunity cost of complying with such would be expected to be low, because of the limited amount of information that would need to be submitted to NMFS. NMFS estimates that a trip notification would require 2 minutes to complete.

Finally, the proposed rule would require that these vessel owners or operators use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. NMFS estimates that if it is necessary to submit separate trip and location reports, estimated at 10 and 2 minutes, respectively, due to hardware or software configurations on a vessel, the time burden could be up to 12 minutes per trip. The GPS portion of the hardware would need to be permanently affixed to the vessel and have uninterrupted power, unless the owner or operator applies for and is granted a power-down exemption.

In addition to the total burden on vessel operators' time, estimated at up to 14 minutes per trip, as discussed earlier, examples of costs borne by the for-hire fleet may include the purchase and installation costs of the approved hardware units and associated service charges. Cost estimates to the for-hire industry were generated for several general options including a tablet-based system, a

handheld GPS, and a smartphone-based system, where the smartphone is hardwired to a vessel's GPS. If a vessel does not already have an approved type of hardware, the estimated startup costs for each affected vessel under the options listed above would range from \$150 to \$450 in the year of implementation. These costs would be equivalent to less than 1 percent of average annual charter vessel or headboat revenue. The recurring annual cost in subsequent years was estimated to be approximately \$20 per vessel. These estimates assume that for-hire vessels already have a basic data plan through a wireless service provider. Some vessels may be more or less affected than others by the proposed rule depending on their existing technology assets and data service plans at the time of implementation, as well as the availability of wireless service coverage at their port of landing. For the affected vessels that currently do not have any wireless carrier contract, the estimated additional cost for an unlimited data plan would range from approximately \$60 to \$100 per month. This is an upper bound estimate based on advertised rates from four major wireless service providers in 2017 and cheaper plans would likely be available. Because details of the NMFS-approved hardware and software have not yet been determined, all cost estimates provided here are subject to

change and could go up or down based on the technology that NMFS ultimately approves and the data that are required to be reported.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for charter vessels. The first alternative, the no-action alternative, would retain current reporting requirements for federally permitted charter vessels. This would not be expected to alter for-hire business costs relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely and accurate estimates of effort, landings, and discards.

The second alternative would require that the owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports

would need to be filed by Tuesday following each reporting week. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the status quo, it would be less burdensome than this proposed rule, because charter vessels would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely than the proposed rule to interfere with normal operations during charter trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Gulf Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require that the owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected

small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this proposed rule. There would be less flexibility than under the second alternative in terms of when reports are filed; however, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under daily reporting than weekly reporting, and recall bias would likely be lower, the Gulf Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for headboats. The first alternative, the no-action alternative, would retain current reporting requirements for federally permitted headboats. This would not be expected to alter for-hire business costs relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely and accurate estimates of effort, landings, and discards.

The second alternative would require that the owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by Tuesday following each reporting week, which is 5 days sooner than under the status quo. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the status quo, it would be less burdensome than this proposed rule, because headboats would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely to interfere with normal operations during headboat trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require that the owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this proposed rule. There would be less flexibility than under the second alternative in terms of when reports are filed; however, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under daily reporting than weekly reporting and recall bias would likely be lower, the Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Three alternatives were considered for the action to implement trip notification requirements for federally permitted charter vessels and headboats. The first alternative, the no-action alternative, would maintain current reporting requirements for for-hire vessels and

would not require trip declarations or landing notifications. Therefore, it would not be expected to result in any direct economic effects on any small entities. The Gulf Council did not select the first alternative because it would not satisfy the data needs required for dockside validation and would not aid in enforcement. The second alternative and two options were selected as preferred, and would require that both federally permitted charter vessels and headboats submit trip declarations to NMFS prior to departing on any trip. The third alternative would require that prior to arriving at the dock at the end of each for-hire trip, the owner or operator of a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to provide a landing notification and submit fishing reports via NMFS-approved hardware and software. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the landing notification requirement. The Gulf Council did not select the third alternative because requiring vessels to provide a landing notification and submit fishing reports prior to arriving at the dock is not necessary with

the preferred reporting alternatives, which require fishing reports be submitted at the end of each trip.

Four alternatives were considered for the action to implement hardware and software requirements for reporting. The first alternative, the no-action alternative, would not change current reporting requirements for for-hire vessels. Therefore, it would not be expected to result in any direct economic effects on any small entities. This alternative was not selected by the Gulf Council because there is currently no reporting platform for charter vessels, and therefore, no means by which charter vessels would be able to submit electronic reports. Additionally, this alternative would not allow for the same level of trip validation, because it would not require GPS unit hardware to be permanently affixed to the vessel.

The second alternative and two options were selected as preferred and would require charter vessel and headboat owners or operators to submit fishing reports via NMFS-approved hardware and software. Under this preferred alternative and options, a for-hire vessel owner or operator would also be required to use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip. The

GPS portion of the hardware would need to be permanently affixed to the vessel.

The third alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software with GPS capabilities that, at a minimum, provide real-time vessel position data to NMFS. The GPS portion of the hardware would need to be permanently affixed to the vessel. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the third alternative. The estimated startup costs for each affected for-hire vessel under the third alternative and two options would total approximately \$300 in the year of implementation, which falls within the estimated startup cost range for this proposed rule. The recurring annual service cost associated with the transmission of real-time location data in subsequent years would be approximately \$200 per vessel, which is greater than the recurring cost associated with this proposed rule. As discussed earlier, these estimates assume for-hire vessels have existing wireless service contracts and sufficient data plans for submitting electronic fishing reports to NMFS. If that is not the case, for-hire vessels

may incur additional expenses in the range of \$60 to \$100 per month. The third alternative was not selected by the Gulf Council because of the higher estimated recurring costs to industry.

The fourth alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software that provide vessel position data to NMFS via VMS. The antenna and junction box would need to be permanently affixed to the vessel. The fourth alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the fourth alternative. The estimated startup costs for each affected vessel to purchase, install, and operate a VMS unit would range from \$2,500 to \$4,400 in the year of implementation. This would be equivalent to approximately 3 to 5 percent of average annual charter vessel revenue and 1 to 2 percent of average annual headboat revenue. The recurring annual cost associated with maintaining and operating VMS hardware and software in subsequent years was estimated to be approximately \$750 per vessel. The fourth alternative was not selected by the Council, because the estimated startup

and recurring costs to the industry were much higher than those of the preferred alternative.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These proposed requirements have been submitted to OMB for approval. NMFS is proposing to revise the collection-of-information requirements under OMB Control Number 0648-0016, Southeast Region Logbook Family of Forms. The proposed rule would require owners or operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species, and when operating as such, to submit an electronic fishing report to NMFS for each trip via NMFS-approved hardware and software, prior to offloading fish from the vessel. Public reporting burden for the proposed requirements are estimated to average 2 minutes to complete the trip notification, 10 minutes per electronic fishing report, and, if separate from the fishing report, 2 minutes to report location information. NMFS estimates a GPS or VMS power-down exemption request would require an average of 5 minutes to complete per occurrence. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data,

and compiling, reviewing, and submitting the information to be collected.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Southeast Regional Office at the **ADDRESSES** above, and by email to *OIRA\_Submission@omb.eop.gov* or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

**List of Subjects in 50 CFR Part 622**

Atlantic, Charter vessel, Cobia, Fisheries, Fishing,  
Gulf of Mexico, Headboat, King mackerel, Recordkeeping and  
reporting, Reef fish, South Atlantic, Spanish mackerel.

Dated: October 22, 2018.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory  
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part  
622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND  
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to  
read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.20, revise paragraph (b) (1) (ii) (A) (2) to  
read as follows:

**§ 622.20 Permits and endorsements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(2) Charter vessel and headboat recordkeeping and reporting requirements specified in § 622.26(b);

\* \* \* \* \*

3. In § 622.26, revise paragraph (b) to read as follows:

**§ 622.26 Recordkeeping and reporting.**

\* \* \* \* \*

(b) *Charter vessel/headboat owners and operators--*(1) *General reporting requirement--*The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested and discarded, and any other information requested by the SRD for each trip within the time period specified in paragraph (b)(2) of this section. The electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as specified in paragraph (b)(5) of this section.

(2) *Reporting deadlines.* Completed electronic fishing

reports required by paragraph (b)(1) of this section must be submitted to the SRD prior to removing any fish from the vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, e.g., arrival at the dock.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means, such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraph (b)(1) of this section must be

submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraph (b)(2) of this section is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must submit electronic reports using NMFS-approved hardware and software with a minimum capability of archiving GPS locations. The GPS portion of the hardware must be permanently affixed to the vessel and have uninterrupted operation.

(i) *Use of a NMFS-approved VMS.* An owner or operator

of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses a NMFS-approved VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements specified in § 622.28, except for the trip notification requirements specified in § 622.28(e). For trip notification requirements, see paragraph (b)(6) of this section.

(ii) *Use of other NMFS-approved hardware and software.*

An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses NMFS-approved hardware and software other than a VMS to comply with the reporting and recordkeeping requirements of this section must comply with the following--

(A) Ensure that such vessel has an operating GPS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (b)(5)(iii)(D) of this section. An operating GPS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved GPS units and

communication providers, which is available at <https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS removes a GPS unit from the approved list, a vessel owner who purchased and installed such a GPS unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS. At the end of a GPS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved GPS unit as specified in paragraph (b) (5) (iii) (A) of this section must ensure that the required GPS unit archives the vessel's accurate position at least once per hour, 24 hours a day, every day of the year, unless exempted from this requirement under paragraphs (b) (5) (iii) (C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved GPS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b) (5) (iii) (B) of this section. Once the vessel is no longer in port, the hourly position reporting

requirement specified in paragraph (b) (5) (ii) (B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a GPS unit operating at all times as specified in paragraph (b) (5) (ii) (A) of this section can be exempted from that requirement and may power down the required GPS unit if--

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b) (5) (ii) (C) of this section, for more than 72 consecutive hours;

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b) (5) (ii) (D) (3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that includes the name of the person filing the report, vessel name, U.S. Coast Guard vessel documentation number or state

vessel registration number, charter vessel/headboat reef fish permit number, vessel port location during GPS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the GPS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a GPS unit.* Only a GPS unit that has been approved by NMFS for the Gulf reef fish fishery may be used, and the GPS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and reactivating the NMFS-approved GPS unit, the vessel owner or operator must--

(1) Follow procedures indicated on the GPS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed GPS installation and activation form to NMFS as specified on the form.

(F) *Interference with the GPS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the GPS, or attempt any of the same.

(G) *Interruption of operation of the GPS.* When a vessel's GPS is not operating properly or if notified by

NMFS that a vessel's GPS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions, or returning to port until the GPS is operable.

(iii) *Access to position data.* As a condition of authorized fishing for or possession of Gulf reef fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the VMS or GPS.

(6) *Trip notification requirements.* Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the

expected trip completion date, time, and landing location.

\* \* \* \* \*

4. In § 622.373, revise paragraph (c)(1) to read as follows:

**§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.**

\* \* \* \* \*

(c) \* \* \* (1) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish is contingent upon compliance with the recordkeeping and reporting requirements specified in § 622.374(b).

\* \* \* \* \*

5. In § 622.374, revise paragraph (b) to read as follows:

**§ 622.374 Recordkeeping and reporting.**

\* \* \* \* \*

(b) *Charter vessel/headboat owners and operators--*(1) *General reporting requirement--*(i) *Gulf of Mexico.* The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested

and discarded, and any other information requested by the SRD for each trip within the time period specified in paragraph (b)(2)(i) of this section. An electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as specified in paragraph (b)(5) of this section.

(ii) *Atlantic headboats*. The owner or operator of a headboat for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Atlantic coastal migratory pelagic fish in or from state waters adjoining the South Atlantic or Mid-Atlantic EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(ii) of this section, via the Southeast Region Headboat Survey.

(2) *Reporting deadlines*--(i) *Gulf of Mexico*. Completed electronic fishing reports required by paragraph (b)(1)(i) of this section must be submitted to the SRD prior to removing any fish from the vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, e.g.,

arrival at the dock.

(ii) *Atlantic headboats*. Electronic fishing records required by paragraph (b) (1) (ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) *Catastrophic conditions*. During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraphs (b) (1) (i) and (ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means, such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS.

During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraphs (b)(1)(i) and (ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraphs (b)(2)(i) or (ii) is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* (i) An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf or Atlantic coastal

migratory pelagic fish has been issued must submit electronic reports using NMFS-approved hardware and software.

(ii) For a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, the NMFS-approved hardware and software must have a minimum capability of archiving GPS locations, and the GPS portion of the hardware must be permanently affixed to the vessel and have uninterrupted operation.

(iii) *Use of a NMFS-approved VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, and who uses a NMFS-approved VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements for the Gulf reef fish fishery specified in § 622.28 of this part, except for the trip notification requirements specified in § 622.28(e) of this part. For trip notification requirements, see paragraph (b)(6) of this section.

(iv) *Use of other NMFS-approved hardware and software.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, and who uses NMFS-approved hardware and software other than a VMS to comply with reporting and

recordkeeping requirements of this section must comply with the following--

(A) Ensure that such vessel has an operating GPS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (b) (5) (iv) (D) of this section. An operating GPS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved GPS units and communication providers, which is available at <https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS removes a GPS unit from the approved list, a vessel owner who purchased and installed such a GPS unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS. At the end of a GPS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved GPS unit as specified in paragraph (b) (5) (iv) (A) of this section must ensure that the required GPS unit archives the vessel's

accurate position at least once per hour, 24 hours a day, every day of the year, unless exempted from this requirement under paragraphs (b) (5) (iv) (C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved GPS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b) (5) (iv) (B) of this section. Once the vessel is no longer in port, the hourly position reporting requirement specified in paragraph (b) (5) (iv) (B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a GPS unit operating at all times as specified in paragraph (b) (5) (iv) (A) of this section can be exempted from that requirement and may power down the required GPS unit if--

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b) (5) (iv) (C) of this section, for more than 72 consecutive hours; and

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b) (5) (iv) (D) (3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that includes the name of the person filing the report, vessel name, U.S. Coast Guard vessel documentation number or state vessel registration number, permit number of the Gulf coastal migratory pelagic charter vessel/headboat permit, vessel port location during GPS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the GPS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a GPS unit.* Only a GPS unit that has been approved by NMFS for the Gulf coastal migratory pelagic fishery may be used, and the GPS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and

reactivating the NMFS-approved GPS unit, the vessel owner or operator must--

(1) Follow procedures indicated on the GPS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed GPS installation and activation form to NMFS as specified on the form.

(F) *Interference with the GPS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the GPS, or attempt any of the same.

(G) *Interruption of operation of the GPS.* When a vessel's GPS is not operating properly or if notified by NMFS that a vessel's GPS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the GPS is operable.

(v) *Access to position data.* As a condition of authorized fishing for or possession of Gulf coastal migratory pelagic fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S.

Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the VMS or GPS.

(6) *Trip notification requirements in the Gulf.* Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.

\* \* \* \* \*

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